

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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FROM: Brian E. Bailey, Commissioner *BEB*

RE: Legislative Changes to Referenda and Petition and Remonstrance Statutes

DATE: June 2, 2011

House Enrolled Act 1238 ("HEA 1238") makes numerous amendments to statutes governing the petition and remonstrance process, controlled project referenda, and school operating levy referenda.¹ This memorandum addresses each of these changes. Unless otherwise noted, these changes are effective July 1, 2011.

Prohibition on Artificial Division to Avoid Petition and Remonstrance

IC 6-1.1-20-3.1 governs the petition and remonstrance process for controlled projects that are not subject to a referendum. The amendment to IC 6-1.1-20-3.1(c) prohibits a unit from artificially dividing a capital project into multiple capital projects to avoid the requirements of the petition and remonstrance process, mirroring language that already existed regarding the referendum process in IC 6-1.1-20-3.6(i). **This amendment is effective upon passage.** IC 6-1.1-20-3.1(c).

Promotion Restrictions

HEA 1238 amends existing promotions rules for controlled projects subject to petition and remonstrance in IC 6-1.1-20-10 and controlled projects subject to referenda in IC 6-1.1-20-10.1, and adds promotion restrictions to school referenda tax levies in IC 20-46-1-20.

A political subdivision may not promote a position on a petition and remonstrance or referendum by doing any of the following:

- 1) Using facilities or equipment, including mail and messaging systems, owned by the school corporation to promote a position on the petition and remonstrance or referendum, unless equal access to the facilities or equipment is given to persons with a position opposite to that of the school corporation.
- 2) Making an expenditure of money from a fund controlled by the school corporation to promote a position on the petition and remonstrance or referendum.

¹ Specifically, HEA 1238 amends IC 6-1.1-20-3.1, IC 6-1.1-20-3.6, IC 6-1.1-20-10, IC 6-1.1-20-10.1, IC 20-46-1-8, IC 20-46-1-13, IC 20-46-1-15, and IC 20-46-1-17, adds IC 20-46-1-19.5 and IC 20-46-1-20, and repeals IC 20-46-1-12.

- 3) Using an employee to promote a position on the petition and remonstrance or referendum during the employee's normal working hours or paid overtime, or otherwise compelling an employee to promote a position on the petition and remonstrance or referendum at any time. However, if an elected or appointed school board member or a school corporation superintendent, school corporation assistant superintendent, or chief school business official of a school corporation is advocating for or against a position on the petition and remonstrance or referendum or discussing the petition and remonstrance or referendum, an employee of the school corporation may assist the person in presenting information, if requested to do so by the person herein described.
- 4) Promoting a position on the petition and remonstrance or referendum by:
 - A) using students to transport written materials to their residences or in any way involving students in a school-organized promotion of a position;
 - B) including a statement within another communication sent to the students' residences; or
 - C) initiating discussion of the petition and remonstrance or referendum at a meeting between a teacher and parents of a student regarding the student's performance or behavior at school. However, if the parents initiate a discussion of the petition and remonstrance or referendum at the meeting, the teacher may acknowledge the issue and direct the parents to a source of factual information on the petition and remonstrance or referendum.

These restrictions apply beginning with the adoption of an ordinance or a resolution by a political subdivision making a preliminary determination to issue bonds or enter into a lease or for a school corporation to place a referendum on the ballot and continuing through the conclusion of the petition and remonstrance process or the day on which the referendum is submitted to the voters. IC 6-1.1-20-10(a); IC 6-1.1-20-10.1(b); and IC 20-46-1-20(a).

An official or employee of the school corporation is not prohibited from carrying out duties with respect to a petition and remonstrance or referendum that are part of the normal and regular conduct of the official's or employee's office or agency, including the furnishing of factual information regarding the referendum in response to inquiries from any person. IC 6-1.1-20-10(a); IC 6-1.1-20-10.1(b); and IC 20-46-1-20(a).

The staff and employees of a school corporation may not personally identify a student as the child of a parent or guardian who supports or opposes the petition and remonstrance or referendum. IC 6-1.1-20-10(b); IC 6-1.1-20-10.1(c); and IC 20-46-1-20(c).

A person or an organization that has a contract or arrangement (whether formal or informal) with a school corporation to provide goods or services to the school corporation may not spend any money to promote a position on a petition and remonstrance or referendum. A person or an organization that violates this prohibition commits a Class A infraction. IC 6-1.1-20-10(d); IC 6-1.1-20-10.1(d); and IC 20-46-1-20(c).

However, this prohibition does not apply to: (1) a personal expenditure to promote a position on a petition and remonstrance or referendum by an employee of a school corporation whose employment is governed by a collective bargaining contract or an employment contract; or (2) an expenditure to promote a position on a local public question by a person or an organization that has a contract or an arrangement (whether formal or informal) with the school corporation solely for the use of the school corporation's facilities. IC 6-1.1-20-10(d); IC 6-1.1-20-10.1(d); and IC 20-46-1-20(c).

An elected or appointed school board member or a school corporation superintendent, school corporation assistant superintendent, or chief school business official of a school corporation may at any time:

- 1) personally advocate for or against a position on a petition and remonstrance or referendum; or
- 2) discuss the petition and remonstrance or referendum with any individual, group, or organization or personally advocate for or against a position on a referendum before any individual, group, or organization;

so long as it is not done by using public funds. Advocacy or discussion allowed here is not considered a use of public funds. However, this provision does not permit advocacy or discussion by a school board member, superintendent, assistant superintendent, or school business official to or with students that occurs during the regular school day. IC 6-1.1-20-10(f); IC 6-1.1-20-10.1(f); and IC 20-46-1-20(d).

On a referendum, a student may use school equipment or facilities to report or editorialize about a local public question as part of the news coverage of the referendum by a student newspaper or broadcast. IC 6-1.1-20-10.1(g); and IC 20-46-1-20(e).

Department Review of Ballot Language on Controlled Project Referendum

IC 6-1.1-20-3.6 governs the referendum process for projects exceeding certain thresholds. HEA 1238 amends IC 6-1.1-20-3.6(e) to require ballot language for a controlled project referendum to be approved by the Department of Local Government Finance ("Department") to be placed on the ballot. Before HEA 1238 became law, the Department reviewed the language of the public question and could recommend that the ballot language be used as submitted or recommend modifications to the ballot language as necessary to ensure that the description of the controlled project was accurate and not biased.

HEA 1238 now requires the Department to either approve the ballot language as submitted or recommend that the ballot language be modified as necessary to ensure that the description of the controlled project is accurate and without bias. The public question may not be placed on the ballot unless the Department has first certified its final approval of the ballot language.

The Department must certify its approval or recommendations to the county auditor and the county election board not more than ten days after the language of the public question is

submitted to the Department for review. If the Department recommends a modification to the ballot language, the county election board shall, after reviewing the recommendations of the Department, submit modified ballot language to the Department for its approval or recommendation of any additional modifications.

This amendment is effective upon passage and applies to ballot language submitted to the Department by the County election board after April 30, 2011.

Department Review of Ballot Language on School Referendum Tax Levy

IC 20-46-1-8 allows a school board to adopt a resolution to be placed on the ballot if a school corporation determines that it (1) cannot carry out its public educational duty unless it imposes a referendum tax levy or (2) that a referendum tax levy should be imposed to replace property tax revenue that the school corporation will not receive because of the application of the circuit breaker credit.

Changes to law in HEA 1238 in IC 20-46-1-8(b) now require a school corporation seeking an operating levy referendum to certify a copy of the school's resolution, including the language of the question, to the Department. Previously, the school corporation had to certify a copy of the resolution to the Department and the county fiscal body.

The Department shall now review the language of the question and either approve or reject the language and send its decision to the school corporation not more than ten days after the resolution is submitted to the Department.

If the language is approved by the Department, the school corporation shall certify a copy of the resolution to the county fiscal body (for informational purposes only) and the circuit court clerk.

This amendment is **effective upon passage** and applies to ballot language submitted to the Department by the County election board after April 30, 2011.

School Referendum Tax Levy Process Changes

IC 20-46-1-12 is repealed by HEA 1238. Because of this repeal, the county fiscal body is no longer required to certify the referendum question to the county election board. This amendment is effective upon passage.

Under changes to IC 20-46-1-13 in HEA 1238, the circuit court clerk will now receive the certification from the governing body of the school corporation, and will then call a meeting of the county election board to make arrangements for the referendum. This amendment is effective upon passage.

IC 20-46-1-15 is amended by HEA 1238 to reflect that the county election board receives the certified question from the school board, instead of from the county fiscal body. This amendment is effective upon passage.

IC 20-46-1-17 is amended by HEA 1238 to require the circuit court clerk to certify the results of the referendum to the Department. Previously the circuit court clerk certified the results to the county fiscal body. If a majority of the individuals who voted in the referendum voted “yes” on the referendum question, the Department, instead of the county fiscal body, is required to notify the school corporation that it is authorized to collect the referendum tax levy. This amendment is **effective upon passage.**

Restrictions on Additional Referenda Tax Levies

HEA 1238 adds IC 20-46-1-19.5 as a new section. IC 20-46-1-19.5(a) provides that if a school operating referendum is approved by voters in a calendar year, another referendum may not be placed on the ballot in the following calendar year. IC 20-46-1-19.5(b) further provides that a school corporation may not simultaneously impose more than two school operating referenda levies at the same time.

Questions may be directed to General Counsel Micah Vincent at 317-233-6770 or mvincent@dlgf.in.gov.